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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MORAJ ERANDA WEERASINGHE,

Action No.

Plaintiff,

**COMPLAINT FOR VIOLATION  
OF CIVIL RIGHTS AND DAMAGES**

vs.

CITY OF EL CERRITO, a municipal corporation;  
SCOTT KIRKLAND, in his capacity as Chief of  
Police for CITY OF EL CERRITO;  
DONOVAN BROSAS, individually, and in his  
capacity as an El Cerrito police officer; and,  
DOES 1-25, inclusive,

Defendants. /

**JURISDICTION**

1. This action arises under Title 42 of the United States Code, Section 1983. Jurisdiction is conferred upon this Court by Title 28 of the United States Code, Sections 1331 and 1343. The unlawful acts and practices alleged herein occurred in the City of El Cerrito, California, which is within this judicial district. Venue is conferred upon this Court by Title 28 United States Code Section 1391(b).

**PARTIES**

2. Plaintiff is, and at all times herein mentioned was, a citizen of the United States residing in El Cerrito, in the County of Alameda, California.

3. Defendant CITY OF EL CERRITO (hereinafter referred to as "CITY") is a municipal corporation, duly organized and existing under the laws of the State of California. At all times herein mentioned, defendant, SCOTT KIRKLAND, was the Chief of Police for the CITY. Defendant, SCOTT KIRKLAND, is sued herein in his capacity as the Chief of Police for the CITY.

4. At all times mentioned herein, defendants DONOVAN BROSAS, and DOES 1-25, inclusive, were employed by defendant CITY as police officers. Defendant police officers are sued herein individually, and in their capacity as police officers for defendant CITY. In engaging in the conduct described herein, defendant police officers acted under color of law and in the course and scope of their employment by defendant CITY. In engaging in the conduct described herein, defendant police officers exceeded the authority vested in them as police officers under the United States and California Constitutions and as police officers employed by defendant CITY.

5. DOES 1-10, inclusive, are defendant police officers employed by defendant CITY, acting within the course and scope of their employment by defendant CITY, who were directly involved in the wrongful assault against plaintiff, and the wrongful and false detention of plaintiff, as described hereinafter.

6. DOES 11-25, inclusive, are defendant police officers employed by defendant CITY, acting within the course and scope of their employment by defendant CITY, who were employed in a supervisory capacity by defendant CITY and were responsible in some manner for properly and adequately hiring, retaining, supervising, disciplining, and training defendant police officer DONOVAN BROSAS and DOES 1-10, in the proper and reasonable use of force, effecting proper detentions and arrests, and treating persons in a manner that is not racially discriminatory.

7. Plaintiff is ignorant of the true names and capacities of defendant DOES 1-25, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that each defendant so named is responsible in some manner for the injuries and



1  
2 damages suffered by plaintiff as set forth herein. Plaintiff will amend his Complaint to state the  
3 true names and capacities of defendants DOES 1 through 25, inclusive, when they have been  
4 ascertained.

5 8. In engaging in the conduct described herein, defendant police officers acted under the color  
6 of law and in the course and scope of their employment with defendant CITY. In engaging in the  
7 conduct described herein, defendant police officers exceeded the authority vested in them as police  
8 officers under the United States and California Constitutions, and as employees of  
9 defendant CITY.

10 9. For State causes of action related to Federal claims, plaintiff is required to comply with an  
11 administrative claim requirement under California law. Plaintiff has complied with all applicable  
12 requirements.

13 **STATEMENT OF FACTS**

14 10. On August 23, 2006, at approximately 2:00 a.m., plaintiff MORAJ ERANDA  
15 WEERASINGHE was inside of his own vehicle with friends, parked in front of his house, located  
16 at 1415 Richmond Street, in El Cerrito, California. At this time, defendant police officer  
17 DONOVAN BROSAS, without any just provocation or cause, drew his gun, pointed it at plaintiff,  
18 and said, "Don't you fucking move, or I will shoot you." Defendant BROSAS repeated this a  
19 couple of times, and called for backup. Shortly thereafter, a line of 5-10 police cars arrived and  
20 parked in a line down the block.

21 11. Then, DOE defendant police officer came up to plaintiff, who was still sitting in his car  
22 with friends, and threatened plaintiff in the same manner that defendant BROSAS had, namely:  
23 DOE defendant police officer drew his gun, pointed it at plaintiff, and told him not to move or he  
24 would shoot plaintiff. Then, defendant officers ordered plaintiff to exit his vehicle, and he  
25 complied. Defendant officers ordered plaintiff to sit on the sidewalk curb, and he complied.

26 12. Plaintiff asked what was going on, and told the defendant officers that this was his car and  
27 he lived in the house right there at 1415 Richmond Street, in El Cerrito, California. Plaintiff added  
28 that his I.D. showed that was his address, and further offered to let the officers inside his house  
with his house keys. Defendant officers would not listen to plaintiff. Plaintiff asked for a sweater

1  
2 or something to keep him warm, and asked if he could get up from sitting on the curb. Despite  
3 plaintiff telling defendant officers that he was suffering from back pain for which he was being  
4 treated, and that his back pain was being exacerbated by sitting in the cold, defendant officers  
5 refused to let him stand up, and did not give him anything to keep him warm.

6 13. Defendant officers made plaintiff sit outside in the cold on the curb in front of his own  
7 house for no reason for about one hour, before defendant officers finally allowed plaintiff to call  
8 his brother who was inside the house, by using his cell phone. Plaintiff's brother answered the  
9 phone call, and then came outside and verified to defendant officers that plaintiff owned the  
10 vehicle he was sitting in, and that the house was indeed plaintiff's residence. Defendant officers  
11 searched plaintiff, and then finally released him without giving him any citation.

12 14. Plaintiff had not done anything to provoke this assault on him, and did nothing to  
13 physically resist these officers. Further, plaintiff was unarmed. Further, plaintiff complied with all  
14 orders given to him by defendant police officers during this incident.

15 15. The above-described assault and wrongful detention of plaintiff by defendant police  
16 officers was brutal, malicious, and was done without any just provocation or cause, proximately  
17 causing injuries and damages to plaintiff.

#### 18 DAMAGES

19 16. As the direct and proximate result of defendants' wrongful conduct, including assault; false  
20 detention and imprisonment; and violation of civil rights, plaintiff was injured and damaged, as set  
21 forth herein.

22 17. As a direct and proximate result of defendant officers' wrongful conduct, plaintiff suffered  
23 the following injuries and damages:

- 24 a. Violation of his constitutional rights under the Fourth and Fourteenth Amendments to the  
25 United States Constitution to be free from unreasonable search and seizure of his person;  
26 b. Loss of physical liberty;  
27 c. Physical injuries, pain and suffering, emotional trauma and suffering, and medical expenses;  
28 d. Violations of the following clearly established and well-settled federal constitutional rights  
include but are not limited to: (1) freedom from unreasonable search and seizure of their persons



1  
2 under the Fourth Amendment to the United States Constitution; and, (2) right to equal protection  
3 under the Fourteenth Amendment to the United States Constitution;

4 e. The conduct of named defendant police officers; and DOES 1-10, inclusive, was malicious,  
5 wanton, and oppressive. Plaintiff is therefore entitled to an award of punitive damages against  
6 said defendant police officers; and,

7 f. Plaintiff found it necessary to engage the services of private counsel to vindicate his rights  
8 under the law. Plaintiff is therefore entitled to an award of all attorney's fees incurred in relation to  
9 this action for violation of his civil rights.

10 **FIRST CAUSE OF ACTION**

11 **(42 U.S.C. Section 1983)**

12 **(Against defendant police officers DONOVAN BROSAS, and DOES 1-10, inclusive)**

13 18. Plaintiff hereby realleges and incorporates by reference herein paragraphs 1 through 17 of  
14 this Complaint.

15 19. In doing the acts complained of herein, named defendant police officer and DOES 1-10,  
16 inclusive, acted under color of law to deprive plaintiff of certain constitutionally protected rights  
17 including, but not limited to:

18 a. The right to be free from unreasonable searches and seizures, as guaranteed by the Fourth  
19 amendment to the United States Constitution;

20 b. The right not to be deprived of life or liberty without due process of law, as guaranteed by  
21 the Fifth and Fourteenth amendments to the United States Constitution;

22 c. The right to equal protection of the laws, as guaranteed by the Fourteenth amendment to the  
23 United States Constitution; and,

24 d. The right to be free from interferences with the zone of privacy, as protected by the Fourth  
25 and Ninth Amendments to the United States Constitution.

26 WHEREFORE, plaintiff prays for relief as hereinafter set forth.

27 **SECOND CAUSE OF ACTION**

28 **(42 U.S.C. Section 1983)**

**(Against defendants CITY; SCOTT KIRKLAND; and DOES 11-25, inclusive)**

20. Plaintiff hereby realleges and incorporates by reference herein paragraphs 1 through 19 of  
this Complaint.

1  
2 21. Plaintiff is informed and believes and thereon alleges that prior to the date of the subject  
3 incident on 8-23-06, defendant police officers DONOVAN BROSAS and DOES 1-10 had a  
4 history of engaging in acts of assault; effecting false arrests; and treating persons in a racially  
5 discriminatory manner, of which defendants CITY; SCOTT KIRKLAND; and DOES 11-25,  
6 inclusive, knew or reasonably should have known for some time prior to the subject incident  
7 involving plaintiff.

8 22. Plaintiff is informed and believes and thereon alleges that despite having such notice of  
9 defendant BROSAS and DOE police officers' prior misconduct, defendants CITY; SCOTT  
10 KIRKLAND; and DOES 11-25, inclusive, approved, ratified, condoned, encouraged and/or tacitly  
11 authorized the continuing pattern and practice of misconduct and civil rights violations by  
12 defendant BROSAS and DOE police officers.

13 23. Plaintiff is further informed and believes and thereon alleges that as a result of the  
14 deliberate indifference, reckless and/or conscious disregard of the prior misconduct of defendant  
15 BROSAS and DOE police officers, defendants CITY; SCOTT KIRKLAND; and DOES 11-25,  
16 inclusive, approved, ratified, condoned, encouraged and/or tacitly authorized defendant BROSAS  
17 and DOE police officers to continue their course of misconduct, resulting in the violation of  
18 plaintiff's rights and injuries and damages to plaintiff as alleged herein.

19 24. Defendant CITY, by and through its supervisory employees and agents, SCOTT  
20 KIRKLAND, Chief of Police for defendant CITY, and DOES 11-25, inclusive, has and had a  
21 mandatory duty of care imposed on it by the 4th and 14th Amendments to the United States  
22 Constitution, to properly and adequately hire, train, retain, supervise, and discipline its police  
23 officer employees so as to avoid unreasonable risk of harm to citizens as the proximate result of  
24 CITY police officers assaulting, effecting false arrests and imprisonments, and/or subjecting  
25 persons to racially discriminatorily motivated misconduct. With deliberate indifference, defendants  
26 CITY, ? , and DOES 11-25, inclusive, failed to take necessary, proper, or adequate measures in  
27 order to prevent the violation of plaintiff's rights and injuries to plaintiff. With deliberate  
28 indifference, defendants CITY, SCOTT KIRKLAND, and DOES 11-25, inclusive, breached their  
duty of care to plaintiff in that: (1) They failed to adequately hire, retain, supervise, discipline, and



1  
2 train police officers, including defendants DONOVAN BROSAS and DOES 1-10, in the proper  
3 use of force; effecting proper and reasonable arrests and detentions; and treating citizens in a  
4 manner that is not racially discriminatory; (2) They failed to have adequate policies and procedures  
5 regarding proper use of force; effecting proper arrests and detentions; and treating citizens in a  
6 manner that is not racially discriminatory; (3) They acted with deliberate indifference, in reckless  
7 and/or conscious disregard of the prior misconduct of defendant police officers DONOVAN  
8 BROSAS and DOES 1-10, and, (4) They approved, ratified, condoned, encouraged and/or tacitly  
9 authorized defendant police officers DONOVAN BROSAS and DOES 1-10 to continue their  
10 course of misconduct of unreasonable assaults; effecting false arrests and detentions, and treating  
11 persons in a manner that is racially discriminatory, resulting in violation of plaintiff's rights, and  
12 injuries and damages to plaintiff as alleged herein..

13 25. This lack of adequate hiring, retention, supervision, training, and discipline of defendant  
14 police officers DONOVAN BROSAS and DOES 1-10 demonstrates the existence of an informal  
15 custom or policy of promoting, tolerating, and/or ratifying the continuing unreasonable assaults;  
16 wrongful false arrests and detentions; and treating persons in a racially discriminatory manner by  
17 police officers employed by defendant CITY.

18 26. The above-described misconduct by defendants CITY; SCOTT KIRKLAND; and  
19 DOES 11-25, inclusive, resulted in the deprivation of plaintiff's constitutional rights, including but  
20 not limited to the following:

21 a. The right to be free from unreasonable searches and seizures, as guaranteed by the Fourth  
22 amendment to the United States Constitution;

23 b. The right not to be deprived of life or liberty without due process of law, as guaranteed by  
24 the Fifth and Fourteenth amendments to the United States Constitution;

25 c. The right to equal protection of the laws, as guaranteed by the Fourteenth amendment to the  
26 United States Constitution; and,

27 d. The right to be free from interferences with the zone of privacy, as protected by the Fourth  
28 and Ninth Amendments to the United States Constitution.

Said rights are substantive guarantees under the Fourth and/or Fourteenth Amendments to the

1  
2 United States Constitution.

3 27. Further, the acts of defendant police officers DONOVAN BROSAS and DOES 1-10  
4 alleged herein, are a direct and proximate result of the abovementioned wrongful conduct of  
5 defendants CITY; SCOTT KIRKLAND; and DOES 11-25, inclusive. Plaintiff's injuries and  
6 damages were a foreseeable and proximate result of the the abovementioned wrongful conduct of  
7 defendant police officers DONOVAN BROSAS and DOES 1-10, and the abovementioned  
8 wrongful conduct of CITY; SCOTT KIRKLAND; and DOES 11-25, inclusive.

9 WHEREFORE, plaintiff prays for relief as hereinafter set forth.

10 **THIRD CAUSE OF ACTION**

11 (Assault)

12 (Against defendant police officers DONOVAN BROSAS, and DOES 1-10, inclusive)

13 28. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 27 of this  
14 Complaint.

15 29. Named defendant police officer and defendants DOES 1-10, inclusive, placed plaintiff in  
16 immediate fear of death and severe bodily harm by assaulting him without any just provocation or  
17 cause, by repeatedly pointing their guns at plaintiff and threatening to shoot him. Said defendants'  
18 conduct was neither privileged nor justified under statute or common law.

19 30. As a proximate result of said defendants' conduct, plaintiff suffered damages as hereinafter  
20 set forth.

21  
22 WHEREFORE, plaintiff prays for relief as hereinafter set forth.

23 **FOURTH CAUSE OF ACTION**

24 (False Arrest and Imprisonment)

25 (Against defendant police officers DONOVAN BROSAS, and DOES 1-10, inclusive)

26 31. Plaintiff hereby realleges and incorporates by reference herein paragraphs 1 through 30 of  
27 this Complaint.

28 32. Named defendant police officer and defendants DOES 1-10, inclusive, falsely detained and  
imprisoned plaintiff without just provocation or probable cause. Plaintiff had not committed any  
crime, and there was no basis upon which defendant officers could have reasonably believed that



1 plaintiff had committed a crime.

2  
3 33. Said defendant officers failed to observe proper or reasonable procedures in falsely  
4 detaining and/or arresting and imprisoning plaintiff without probable cause.

5 34. As a proximate result of said defendants' conduct, plaintiff suffered damages as hereinafter  
6 set forth.

7 WHEREFORE, plaintiff prays for relief as hereinafter set forth.

8 **FIFTH CAUSE OF ACTION**

9 **(Intentional Infliction of Emotional Distress)**

10 **(Against defendant police officers DONOVAN BROSAS, and DOES 1-10, inclusive)**

11 35. Plaintiff hereby realleges and incorporates by reference herein paragraphs 1 through 36  
12 of this Complaint.

13 36. The conduct of named defendant police officer and defendants DOES 1-10, inclusive, as  
14 set forth herein, was extreme and outrageous and beyond the scope of conduct which should be  
15 tolerated by citizens in a democratic and civilized society. Said defendants committed the  
16 aforementioned extreme and outrageous acts with the intent to inflict severe mental and emotional  
17 distress upon plaintiff.

18 37. As a proximate result of said defendant officers' willful, intentional and malicious conduct,  
19 plaintiff suffered severe and extreme mental and emotional distress. Therefore, plaintiff is entitled  
20 to an award of punitive damages against said defendants. Plaintiff has suffered injuries and  
21 damages as hereinafter set forth.

22 WHEREFORE, plaintiff prays for relief as hereinafter set forth.

23 **SIXTH CAUSE OF ACTION**

24 **(Violation of Civil Code Section 52.1)**

25 **(Against defendant police officers DONOVAN BROSAS, and DOES 1-10, inclusive)**

26 38. Plaintiff hereby realleges and incorporates by reference herein paragraphs 1 through 37  
27 of this Complaint.

28 39. The conduct of named defendant police officers and defendants DOES 1-10, inclusive, as  
described herein, acting in the course and scope of their employment for defendant CITY, violated  
California Civil Code Section 52.1, in that they interfered with plaintiff's exercise and enjoyment  
of his civil rights, by assaulting him, and wrongfully detaining and/or arresting and imprisoning

1 plaintiff. Further, said defendant officers violated plaintiff's right to be free from racial discrimination  
 2 pursuant to the 14th Amendment of the U.S. Constitution; California Constitution; and various  
 3 federal and California statutes, including California Civil Code Section 52.1, in that their  
 4 misconduct towards plaintiff was motivated by racial animus.  
 5

6 40. As a direct and proximate result of said defendants' violation of Civil Code Section 52.1,  
 7 plaintiff suffered violation of his constitutional rights, and suffered damages as set forth herein.

8 41. Plaintiff is entitled to injunctive relief and an award of his reasonable attorney's fees  
 9 pursuant to Civil Code Section 52.1(h).

10 WHEREFORE, plaintiff prays for relief, as hereinafter set forth.

#### 11 **SEVENTH CAUSE OF ACTION**

##### 12 **(Negligence)**

13 **(Against defendant police officers DONOVAN BROSAS, and DOES 1-10, inclusive)**

14 42. Plaintiff hereby realleges and incorporates by reference herein paragraphs 1 through 41  
 15 of this Complaint, except for any and all allegations of intentional, malicious, extreme, outrageous,  
 16 wanton, and oppressive conduct by defendants, and any and all allegations requesting punitive  
 17 damages.

18 43. At all times herein mentioned, named defendant police officer and defendants DOES 1-10,  
 19 inclusive, were subject to a duty of care to avoid causing injuries and damages to persons by not  
 20 unreasonably and wrongfully assaulting them, and by not effecting wrongful detentions and  
 21 arrests. The wrongful conduct of said defendants, as set forth herein, did not comply with the  
 22 standard of care to be exercised by reasonable police officers acting in similar circumstances,  
 23 proximately causing plaintiff to suffer injuries and damages as set forth herein.

24 44. As a proximate result of said defendants' negligent conduct, plaintiff suffered severe and  
 25 extreme emotional and mental distress and injury, having a traumatic effect on plaintiff's  
 26 emotional tranquility, and damages.

27 WHEREFORE, plaintiff prays for relief as hereinafter set forth.

#### 28 **EIGHTH CAUSE OF ACTION**

##### **(Negligent Hiring, Retention, Training, Supervision, and Discipline)**

**(Against defendants CITY; SCOTT KIRKLAND; and DOES 11-25, inclusive)**

45. Plaintiff hereby realleges and incorporates by reference herein paragraphs 1 through 44 of



1  
2 this Complaint, except for any and all allegations of intentional, malicious, extreme, outrageous,  
3 wanton, and oppressive conduct by defendants, and any and all allegations requesting punitive  
4 damages.

5 46. Plaintiff is informed and believes and thereon alleges that prior to the date of the subject  
6 incident on 8-23-06, defendant police officers DONOVAN BROSAS and DOES 1-10, inclusive,  
7 had a history of engaging in acts of assault; effecting false arrests and detentions, and/or treating  
8 persons in a racially discriminatory manner, of which defendants CITY; SCOTT KIRKLAND; and  
9 DOES 11-25, inclusive, knew or reasonably should have known for some time prior to the subject  
10 incident involving plaintiff on 8-23-06.

11 47. Plaintiff is informed and believes and thereon alleges that despite having such notice of  
12 DONOVAN BROSAS' and DOE 1-10 defendant police officers' prior misconduct, defendants  
13 CITY; SCOTT KIRKLAND; and DOES 11-25, inclusive, negligently ratified, condoned,  
14 encouraged and/or tacitly authorized the continuing misconduct and civil rights violations by  
15 defendant police officers DONOVAN BROSAS and DOES 1-10, inclusive, of unreasonable and  
16 wrongful assaults; effecting false arrests and detentions; and/or treating persons in a racially  
17 discriminatory manner.

18 48. Plaintiff is further informed and believes and thereon alleges that as a result of their  
19 reckless and/or conscious disregard of the prior misconduct of defendant police officers  
20 DONOVAN BROSAS and DOES 1-10, inclusive, defendants CITY; SCOTT KIRKLAND; and  
21 DOES 11-25, inclusive, approved, ratified, condoned, encouraged and/or tacitly authorized  
22 defendant police officers DONOVAN BROSAS and DOES 1-10, inclusive, to continue their  
23 course of misconduct, resulting in the violation of plaintiff's rights and injuries and damages to  
24 plaintiff as alleged herein.

25 49. Defendant CITY, by and through its supervisory employees and agents, SCOTT  
26 KIRKLAND, Chief of Police for CITY, and DOES 11-25, inclusive, has and had a mandatory duty  
27 of care imposed on it by the 4th and 14th Amendments to the United States Constitution, to  
28 properly and adequately hire, train, retain, supervise, and discipline its police officer employees so  
as to avoid unreasonable risk of harm to persons as the proximate result of CITY police officers'

1  
2 unreasonable assaults; effecting false arrests, detentions, and imprisonments; and/or subjecting  
3 persons to racially discriminatorily motivated misconduct. Defendants CITY; SCOTT  
4 KIRKLAND; and DOES 11-25, inclusive, negligently failed to take necessary, proper, or adequate  
5 measures in order to prevent the violation of plaintiff's rights and injuries to plaintiff. Defendants  
6 CITY; SCOTT KIRKLAND; and DOES 11-25, inclusive, breached their duty of care to plaintiff  
7 in that: (1) They negligently failed to adequately hire, retain, train, supervise, and/or discipline  
8 CITY police officers, including defendants DONOVAN BROSAS and DOES 1-10, inclusive, in  
9 the proper and reasonable use of force; effecting proper and reasonable arrests and detentions;  
10 and/or treating persons in a manner that is not racially discriminatory; (2) They negligently failed  
11 to have adequate policies and procedures regarding proper and reasonable use of force; effecting  
12 proper and reasonable arrests and detentions; and/or treating persons in a manner that is not  
13 racially discriminatory; (3) They acted with reckless and/or conscious disregard of the prior  
14 misconduct of defendant police officers DONOVAN BROSAS and DOES 1-10, inclusive, by  
15 negligently failing to adequately hire, retain, train, supervise, and/or discipline CITY police  
16 officers, including defendant police officers DONOVAN BROSAS and DOES 1-10, inclusive, in  
17 the use of reasonable force; effecting proper and reasonable arrests and detentions; and/or treating  
18 persons in a manner that is not racially discriminatory; and, (4) They approved, ratified, condoned,  
19 encouraged and/or tacitly authorized defendant police officers DONOVAN BROSAS and DOES  
20 1-10, inclusive, to continue their course of misconduct, resulting in the violation of plaintiff's  
21 rights, and injuries and damages to plaintiff as alleged herein.

22 50. The above-described negligent misconduct by defendants CITY; SCOTT KIRKLAND; and  
23 DOES 11-25, inclusive, resulted in the deprivation of plaintiff's constitutional rights, including but  
24 not limited to the following:

25 a. The right to be free from unreasonable searches and seizures, as guaranteed by the Fourth  
26 Amendment to the United States Constitution;

27 b. The right not to be deprived of life or liberty without due process of law, as guaranteed by  
28 the Fifth and Fourteenth Amendments to the United States Constitution;

c. The right to equal protection of the laws, as guaranteed by the Fourteenth Amendment to the



1  
2 United States Constitution; and,

3 d. The right to be free from interferences with the zone of privacy, as protected by the Fourth  
4 and Ninth Amendments to the United States Constitution.

5 Said rights are substantive guarantees under the Fourth and/or Fourteenth Amendments to the  
6 United States Constitution.

7 51. Further, the acts of defendant police officers DONOVAN BROSAS and DOES 1-10,  
8 inclusive, alleged herein, are a direct and proximate result of the abovementioned negligent  
9 wrongful conduct of defendants CITY; SCOTT KIRKLAND; and DOES 11-25, inclusive.  
10 Plaintiff's injuries and damages were a foreseeable and proximate result of the abovementioned  
11 wrongful conduct of defendant police officers DONOVAN BROSAS and DOES 1-10, inclusive,  
12 and the abovementioned wrongful conduct of defendants CITY; SCOTT KIRKLAND; and  
13 DOES 11-25, inclusive.

14 52. Defendant CITY is liable to plaintiff pursuant to Govt. Code Section 815.6; and defendants  
15 SCOTT KIRKLAND and DOES 11-25, inclusive, are liable to plaintiff pursuant to Govt. Code  
16 Sections 820.2 and 820.4, for plaintiff's injuries and damages hereinafter set forth.

17 WHEREFORE, plaintiff prays for relief as hereinafter set forth.

18 **NINTH CAUSE OF ACTION**  
19 **(Vicarious Liability)**  
20 **(Against defendant CITY OF EL CERRITO)**

21 53. Plaintiff hereby realleges and incorporates by reference herein paragraphs 1 through 52  
22 of this Complaint, except for any and all allegations of intentional, malicious, extreme, outrageous,  
23 wanton, and oppressive conduct by defendants, and any and all allegations requesting punitive  
24 damages.

25 54. Pursuant to Government Code Section 815.2(a), defendant CITY OF EL CERRITO is  
26 vicariously liable to plaintiff for his injuries and damages alleged herein, incurred as a proximate  
27 result of the aforementioned intentional and/or negligent wrongful conduct of defendant police  
28 officers DONOVAN BROSAS and DOES 1-25, inclusive, as set forth in plaintiff's First Cause of  
Action, and Third through Eighth Causes of Action herein.

55. As a proximate result of defendants' conduct, plaintiff suffered injuries and damages, as

hereinafter set forth.

WHEREFORE, plaintiff prays for relief as hereinafter set forth.

**JURY DEMAND**

56. Plaintiff hereby demands a jury trial in this action.

**PRAYER**

WHEREFORE, plaintiff prays for relief, as follows:

1. For general damages in the sum of \$ 100,000.00;
2. For special damages according to proof;
3. For punitive damages against defendant police officers DONOVAN BROSAS and DOES 1-10, inclusive, according to proof;
4. For injunctive relief enjoining defendant CITY OF EL CERRITO from authorizing, allowing, or ratifying the practice by any of their employees of making unreasonable and wrongful assaults on persons; effecting unreasonable and improper arrests, detentions, and imprisonments of persons; and, from treating persons in a manner that is racially discriminatory, in violation of California Civil Code Section 52.1;
5. For violation of California Civil Code Sections 52 and 52.1, punitive damages against defendant police officers DONOVAN BROSAS and DOES 1-10, inclusive; \$ 75,000.00 for each offense; and reasonable attorney's fees;
6. For reasonable attorney's fees pursuant to 42 U.S.C. Sections 1983 and 1988;
7. For costs of suit herein incurred; and,
8. For such other and further relief as the Court deems just and proper.

LAW OFFICES OF GAYLA B. LIBET

Dated: 11-21-07

By: Gayla B. Libet

GAYLA B. LIBET, Esq.  
Attorneys for Plaintiff